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VIA OVERNIGHT MAIL

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
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Re: **MUR#5942**
Complaint against Rudy Giuliani Presidential Committee, Inc.
(the "RGPC") and The New York Times Company ("The Times")

Dear Mr. Jordan:

I write in response to a letter from the Federal Election Commission (the "Commission") dated October 1, 2007, forwarding a complaint by one Lane Hudson received by the Commission on September 24, 2007. The complaint alleges that the RGPC violated the Federal Election Campaign Act of 1971, as amended, (the "Act") by receiving an illegal "corporate soft money contribution" by somehow paying less for an advertisement in *The New York Times* than Mr. Hudson deems appropriate. Though the Hudson letter is styled as a complaint against the RGPC and not The Times, the Commission has written that the complaint indicates that The Times may have violated the Act, presumably as a result of the price charged to the RGPC for its September 14 ad (the "ad").

INTRODUCTION

The RGPC ad published in *The Times* on September 14 arose from the MoveOn.org ("MoveOn") ad attacking General Petraeus (MUR # 5939). The ad is in substance an attack on MoveOn, The Times and the "Democrat presidential candidates committed to defending MoveOn.org" and was placed apparently at least partially as a result of the reporting and controversy about the rates and terms given by The Times to MoveOn. Nonetheless, the facts here are quite different than in the MoveOn scenario.

For the entire ad ordering and placement process, the RGPC ad was discussed, accepted and coded as a standby ad. The RGPC was told and understood that, as a standby ad, it might not run on the desired date. Indeed, in a taped interview and in news statements, Mr. Giuliani himself, as well as his spokesman, specifically said that The Times "wouldn't tell us whether they were going to put [the ad] in tomorrow." The ad was billed at the published standby rate: \$64,575. Since the RGPC received no better deal than similarly situated advertisers and, in fact, received the published rate card price, there was no way this transaction can be construed to constitute a contribution.

It is therefore respectfully submitted that there is no reason to believe that a violation has occurred and that the matter should be dismissed.

FACTS AND ANALYSIS

Apparently in response to the MoveOn. ad which ran in *The Times* on September 10, three days later the Giuliani campaign called a Times advertising salesperson saying that it too wanted to place a full-page ad the next day at the same rate as MoveOn had received. (The content of the MoveOn ad and the rate charged MoveOn by The Times had both been the subject of widespread media coverage and controversy in the intervening days.) The Times advertising salesperson

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responded to the CrossRoads Media ad agency representative working for the RGPC by saying that such rate would entitle the RGPC to a standby ad, which meant that while The Times would attempt to place the ad when the RGPC desired, it could be placed anytime in the next seven days depending on space constraints. (Unlike the conversations surrounding the MoveOn ad which were in the context of ongoing discussions and Times's hopes for purchase of a series of ads, the RGPC ad was a one-time arrangement.)

Because of the high visibility nature of this transaction and the brouhaha caused by the MoveOn ad just a few days earlier, The Times advertising salesperson consulted a Times advertising Vice President about the request. The Times vice president confirmed what the salesperson had already told the ad agency by reminding her that she could not commit to a specific date for the ad to run. In another call later that afternoon the CrossRoads representative told the same Times advertising salesperson that the RGPC wanted the ad to appear in *The Times* the following day. The Times advertising salesperson explained to her clearly that The Times would do the best it could, but that it could not guarantee the ad would run the next day.

When the RGPC submitted the insertion order with the content of the ad, the advertising salesperson wrote "standby" on it and sent the ad to the standby team in The Times advertising production department. Consistent with usual procedures on a standby ad, the ad salesperson indicated that the RGPC desired the ad to run on Friday, and the employees in the advertising production department said that they would do the best they could. No guarantees were ever made to the RGPC that the ad would run on Friday, and, indeed, it wasn't until late in the afternoon when The Times's pagination requirements for Friday's paper became known that The Times determined that the ad would run on Friday as desired. All of this is totally routine and in line with The Times's

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standard procedures for standby ads. Thus, The Times accepted the ad as a standby ad and followed its applicable procedures.¹

Indeed, Mr. Giuliani himself confirmed this. On the Hugh Hewitt show, Mr. Giuliani was interviewed and, in the midst of attacking The Times, MoveOn and Hilary Clinton for supporting the sentiments of the MoveOn ad, said that he had asked The Times to put in an ad criticizing Sen. Clinton's support of the ad at the same rate that MoveOn got. Mr. Giuliani said that we submitted the ad and that The Times "wouldn't tell us whether they were going to put it in tomorrow." (A tape of this interview is available on YouTube, at <http://www.youtube.com/watch?v=HNd0kgiuijE>; it can be forwarded to the Commission upon request.) Likewise, sometime later, a Giuliani spokesman also confirmed that the normal standby rate and terms applied:

A spokesman for the Giuliani campaign said that it would not pay the difference [between the rate Giuliani paid and the published rate for a reserved-date full-page ad] because The Times did not guarantee when it would run the advertisement. "Our ad not only met the acceptability standards of The New York Times, but it was placed at the standby rate with no commitment it would run on a specific date," the spokesman said. (Group Pays Higher Price For an Ad In The Times" by Katharine Seelye, NYT, 9/26/07, p A25.)


In sum, the advertisement was accepted as a standby ad, coded in Times work order documents as a standby ad, explained to the RGPC buyers that it would run as a standby ad, run on a standby basis, and was billed at the published standby ad rate. For all these reasons, it was an ordinary commercial transaction, not any kind of corporate contribution.

¹ In the end, the RGPC got the same results as MoveOn, publication on the desired date at a \$64,575 price. However, they came about somewhat differently, the RGPC via published standby rates and terms, and MoveOn with a reserved date but at a negotiated rate (see Times's response to MUR #3939).

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For all the reasons set forth above, even if Mr. Hudson's complaint is deemed as one against The Times, it is respectfully submitted that the Commission should find no reason to believe that a violation has occurred and should dismiss this matter.

Respectfully submitted,


George Freeman

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